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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,957	07/11/2003	Gilbert Schwartzman		2140

7590 09/17/2004

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EXAMINER

WALCZAK, DAVID J

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,957

Applicant(s)

SCHWARTZMAN ET AL.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1020 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 13 and 16-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/11/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 4, 5 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In regard to claims 4 and 14, the specification does not disclose a sealing rim having an annular recess, i.e., sealing rim 43 does not include an annular recess. It is further noted that the skirt 64 is disclosed as having an annular recess (page 7, lines 1-3).

Claims 5 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 5, it is unclear as to whether or not the sealing rim defined therein is intended to define the same sealing rim recited in claim 4, or a different sealing rim. In regard to claim 14, an antecedent basis for "said elastic closure caps outer sealing rim" should be defined. It is further noted that there is verbiage between claims 14 and 15 that apparently was intended to be part of claim 14. Clarification on the intent of this verbiage is needed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 7, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by McCabe. In regard to claim 1, McCabe discloses a fluid applicator valve comprised of a stopper 11 and an elastic closure cap 15 wherein the stopper has a circumferential recess 17 formed by a sidewall around a fluid passage and a valve seat under the fluid passage, and the cap has a skirt area having a sealing rib 16, a dome area, a diaphragm area and a sealing lip 19 wherein the sidewall extends “inwardly above” the rib 16 to secure the cap to the stopper such that the cap is capable of being pressed against and frictionally rubbed on a surface. In regard to claim 2, the recess 17 has an outer diameter that is smaller than the skirt diameter such there will inherently be a force on the cap to urge the lip 19 to engage the valve seat. In regard to claim 3, the stopper defines a limit rib 13. In regard to claim 6, a valve neck 18 attaches the lip 19 to the diaphragm area and extends through the fluid passage. In regard to claim 7, the neck 18 has a diameter smaller than the fluid passage and the lip has a diameter larger than the passage. In regard to claim 12, the cap skirt, dome area, diaphragm, neck and lip are integrally formed of a one-piece elastomeric material. In regard to claim 15, McCabe discloses a applicator comprised of a stopper and cap as claimed (as discussed supra), means for applying a force against the diaphragm for raising the lip (the resilient nature of the cap provides this “means”) and means 17 on the stopper for

securing the skirt wherein the means for applying the force includes a difference between the length of the skirt and the means 17 for securing the cap.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCabe in view of Gibbons. Although the McCabe device does not have scrubbing tines on the cap, attention is directed to the Gibbons reference, which discloses another dispenser wherein such tines 24 are present in order to enable a user to employ the dispenser as a scouring device. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such tines onto the McCabe device in order to enable a user to employ the dispenser as a scrubbing device.

Allowable Subject Matter

Claims 10, 11, 13 and 16-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Schwartzman reference is cited for disclosing another valved dispenser.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David J. Walczak
Primary Examiner
Art Unit 3751

DJW
9/16/04